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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/580,892	05/30/2000	Tsuyoshi Fukuda	B208-1094	2097
26272	7590	09/07/2005	EXAMINER	
COWAN LIEBOWITZ & LATMAN P.C.			JONES, HEATHER R	
JOHN J TORRENTE			ART UNIT	
1133 AVE OF THE AMERICAS			2615	
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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/580,892

Applicant(s)

FUKUDA, TSUYOSHI

Examiner

Heather R. Jones

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 4,5,22,39,41-49 and 52-68 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4,5,22,39,41-46,48,52-55,58-62 and 65 is/are allowed.
- 6) ☒ Claim(s) 47,49,56,57,63,64 and 66-68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 May 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments with respect to claims 4, 5, 22, 39, 41-49, and 52-68 have been considered but are moot in view of the new ground(s) of rejection.

### *Claim Rejections - 35 USC § 101*

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 47, 49, and 66-68 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. See MPEP 2106, the following excerpt is under the heading "Nonstatutory Subject Matter":

(a) Functional Descriptive Material: "Data Structures" Representing Descriptive Material *Per Se* or Computer Programs Representing Computer Listings *Per Se*

Data structures not claimed as embodied in computer-readable media are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structure's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 56, 63 and 66 are rejected under 35 U.S.C. 102(b) as being anticipated by Takayama (U.S. Patent 5,260,774).

Regarding claim 56, Takayama discloses a camera comprising: a white balance correcting circuit (44) for correcting white balance of a picked-up image by picking up an image of a first object on the basis of white balance data obtained by picking up an image of a second object (Fig. 10); a focusing circuit arranged to perform a focusing operation; and a control circuit for controlling to pick up the image of the first object by operating the focusing circuit on the basis of a first operation, and for picking up the image of the second object by operating the focusing circuit on the basis of a second operation, different from the first operation; wherein the focusing circuit performs focusing operation on the basis of an image whose sharpness is higher than a plurality of images (col. 1, lines 66 – col. 2, line 5). Takayama discloses that the lens are brought into a defocus state during white balancing (the first reading of the sensor), thereby focusing is different in the second operation (the white balancing mode) than in the first operation (image taking mode) since the lens are brought into a defocus state during white balancing. However, a defocus state is still a state of focusing but at a lower level of focusing. Furthermore, since a defocus state is still a state of focusing but only a lower level of focusing that means that during the first operation where the first object is brought into focus the sharpness of the image

would be much higher than in the image of the second object taken using the second operation.

Regarding claim **63**, claim 63 is a method claim corresponding to the apparatus claim 56. Therefore, claim 63 is analyzed and rejected as previously discussed with respect to claim 56.

Regarding claim **66**, claim 66 is a storage medium for storing a program corresponding to the limitations disclosed in claim 56. The steps are analyzed and rejected as previously discussed with respect to claim 56. Furthermore, Takayama discloses a microcomputer (35) wherein the program for white balancing is stored as discussed previously with respect to claim 56.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 57, 64, and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saito et al. (U.S. Patent 5,319,449) in view of Sasakura (U.S. Patent 5,995,144).

Regarding claim **57**, Saito et al. discloses a camera comprising: a white balance correcting circuit (8) for correcting white balance of a picked-up image by picking up an image of a first object on the basis of white balance data obtained

by picking up an image of a second object (col. 9, line 64 – col. 7, line 5); and a focusing circuit (microcomputer (12) outputs the auto-focus signal P1 - col. 6, lines 58-59) controls so that an image of an object obtained by picking up changes from de-focus state to in-focus state (the object is originally in the de-focus state until the microcomputer sends the signal to auto-focus the object). Furthermore, it is implicit that there is distance measuring points included in the auto-focusing technique in order to determine the distance from the object to the lens. However, Saito et al. fails to disclose a control circuit for controlling to pick up the image of the first object by operating the focusing circuit on the basis of a first operation, and for picking up the image of the second object by operating the focusing circuit on the basis of a second operation, different from the first operation.

Referring to the Sasakura reference, Sasakura discloses that during auto-focusing if the electronic camera uses a smaller number of pixels the auto-focusing calculation time will be reduced (col. 3, lines 39-44).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the teaching of using a smaller number of pixels during auto-focusing in order to reduce the auto-focusing time as taught by Sasakura with the white-balancing process as disclosed by Saito et al. in order to reduce the time it takes to white-balance the camera because by reducing the auto-focusing time it will in turn reduce the amount of time it takes to do the white balancing.

Regarding claim **64**, claim 64 is a method claim corresponding to the apparatus claim 57. Therefore, claim 64 is analyzed and rejected as previously discussed with respect to claim 57.

Regarding claim **67**, claim 67 is a storage medium for storing a program corresponding to the limitations disclosed in claim 57. The steps are analyzed and rejected as previously discussed with respect to claim 57. Furthermore, Takayama discloses a microcomputer (35) wherein the program for white balancing is stored as discussed previously with respect to claim 57.

***Allowable Subject Matter***

7. Claims 4, 5, 22, 39, 41-46, 48, 52-55, 58-62, and 65 are allowed.
8. The following is an examiner's statement of reasons for allowance: Prior art fails to teach or fairly suggest a camera with a white balance correcting circuit for correcting white balance of a picked-up image by picking up an image of a first object on the basis of white balance data obtained by picking up an image of a second object, in combination with all the other elements claimed, comprising:
  - a. A control circuit for controlling to pick up the image of the second object without driving the lens used for the focusing operation after operation for picking up the image of the second object by a user (claims 4 and 46).
  - b. A control circuit for controlling to pick up the image of the second object without performing determination of in-focus state and de-focus state after

operation for picking up the image of the second object by a user (claims 39 and 48).

c. An operation element by which a user selects at least a first mode and a second mode; wherein the first mode is a mode in which the white balance correcting circuit corrects white balance of a picked-up image by picking up an image of third object on the basis of white balance data corresponding to a light source, which has been beforehand prepared, and the second mode is a mode in which the white balancing circuit corrects the white balance of the picked-up image by picking up the image of the first object on the basis of the white balance data obtained by picking up the image of the second object (claim 52).

d. A control circuit for controlling to pick up the image of the second object without performing determination of sharpness of the image of the second object after operation for picking up the image of the second object by a user (claims 58 and 65).

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Heather R. Jones whose telephone number is 571-272-



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7368. The examiner can normally be reached on Mon. - Thurs.: 7:00 am - 4:30 pm, and every other Fri.: 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Ometz can be reached on 571-272-7593. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Heather R Jones  
Examiner  
Art Unit 2615

HRJ  
September 1, 2005



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